

LABOUR DEPARTMENT

The 11th May, 1981

No. 9(1)81-8-Lab/4968.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s. Bharat Carpets Ltd., Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference Nos. 304 to 308, 231, 234, 236, 237, 240, 241, 242, 244 and 261 of 1980

between

S/SHRI RAM BHAGALU, BALMIK, SATYA NARAIN SINGH, MADAN LAI, RAM SUMER, RAM ADHAR JHA, PIARE LAL, RAM PARKASH, PARBHU DAYAL, HARI LAL, YOGINDER PRASHAD GUPTA, JAGDISH CHANDER, JAMNA PRASHAD AND KARANSINGH WORKMEN AND THE MANAGEMENT OF M/S. BHARAT CARPETS LIMITED, FARIDABAD

Present—

Shri K.R.R. Pillai for the workmen.

Shri S.K. Sharma for the management.

AWARD

This award will dispose off reference Nos. 304 to 308, 231, 234, 236, 237, 240, 241, 242, 244 and 261 of 1980.

These disputes were referred for adjudication to this Tribunal, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the term of reference in each case being the same :—

Whether the termination of services of the workmen concerned was justified and in order ? If not, to what relief are they entitled ?

These references were consolidated *vide* order dated 20th February, 1980 and 14th April, 1980 by my predecessor there being common question of fact and law. Evidence was recorded in reference No. 304 of 1980.

On receipt of the order of references, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 14th December, 1979 :—

1. Whether this reference is hit by an Arbitration Award ?
2. Whether the reference is bad as alleged in preliminary objection No. 2 ?
3. Whether the reference is bad for invague and without application of mind by the Government ?
4. Whether the claim statement is defective? If so, its effect ?
5. Whether the domestic enquiry is fair and proper and is in accordance with the principles of natural justice ?

6. Whether the termination of services of the workmen is justified and in order?

7. Relief.

And the case was fixed for the evidence of the management who examined Shri Lalit Joshi their Administrative Manager as M.W. 1, Shri Krishan Kumar Karauli Enquiry Officer as M.W. 2, and closed their case. Then the case was fixed for the evidence of the workmen, who examined Shri Hari Lal concerned workman as W.W. 1, and Shri Ram Parkash concerned workman as W.W. 2, and closed their case. The parties agreed not to examine other workmen to avoid repetition of the same evidence. I now give my finding issues-wise :—

Issues No. 1 to 4. — The representative for the management made a statement that he did not press these issues, hence these issues are decided against the management.

Issue No. 5. — M.W. 1 stated that on 19th September, 1978 there was violence in the factory. The officers of the management as well the workmen received injuries in that violence. The Director was also injured. Charge-sheets were issued to each concerned workman by registered A.D. post which was also published in the local newspaper named "Shere Haryana". Intimation of enquiry was given to the workman by registered post and also published in the said newspaper. The Enquiry Officer also sent notice of enquiry to the workmen. He produced documents, Exhibit M-1 to M-40 in reference No. 304, Exhibit M-1 to M-44, in reference No. 305, Exhibit M-1 to M-44, in reference No. 306, Exhibit M-1 to M-41, in reference No. 307, Exhibit M-1 to M-33, in reference No. 231, Exhibit M-1 to M-36 in reference No. 234, Exhibit M-1 to M-43, in reference No. 236, Ex. M-1 to M-37, in reference No. 237, Ex. M-1 to M-47, in reference No. 240, Ex. M-1 to M-37, in reference No. 241, Ex. M-1 to M-43, in reference No. 242, Ex. M-1 to M-39, in reference No. 244 and Ex. M-1 to M-47, in reference No. 261. In cross examination he stated that he could not tell the joining dates of all the concerned workmen without reference to employment record. He further stated that appointment letters were issued to the workmen. He stated that he was not present on 19th September, 1978. He did not witness violence. He could not tell the shift of each workman without consulting record. The local and permanent addresses of the workmen were given in the employment form by them. Notice of enquiry was published in issue No. 37 of Shere Haryana dated 26th to 31st October, 1978. The enquiry started in the month of November. He could not tell if the workman came to the factory gate after 19th September, 1978 as the factory was closed. There was no Library in the factory. The newspaper "Shere Haryana" was a widely circulated newspaper. It went to all the factories, Restaurants and Hotels in Faridabad. The factory was opened on 1st December, 1978. He further stated that Labour Minister Haryana, had come to Faridabad on 30th November, 1978 and it was declared in the presence of 300—350 workmen that the factory will be opened with effect from 1st December, 1978. MW-2 stated that he was appointed as Enquiry Officer in respect of these workmen. He had enquired into the charges. The workmen did not appear before him. He sent them intimation by registered letter as well by publication in the newspapers "Shere Haryana". The enquiry was held in room number 5 Holiday Inn, Lajpat Nagar, New Delhi. On the days of the sitting of the enquiry a message was left to the Manager regarding the same. As the workmen did not appear so he started enquiry *ex-parte*. Statement of witnesses produced by the management were recorded by him and documents received. He submitted his enquiry report to the management. He found all the workmen guilty of the charges levelled against them. He endorsed all the documents and other papers of enquiry file placed with each of the reference. In cross examination he stated that all the workmen were given intimation of the time and place of enquiry and also, about his appointment as enquiry Officer. The first intimation of enquiry was given by the management with his concurrence. The venue of enquiry was fixed keeping in view the apprehension of breach of peace at the factory. The management had informed him about the apprehension and he had also formed this opinion.

looking into the nature of charges levelled against them. When the workmen did not attend on the first date enquiry was adjourned to other date in the month of December as given in the enquiry proceedings and notice were issued to the workmen. The venue of the enquiry was kept the same. He did not receive any intimation from the workmen for change of place of enquiry. The workmen did not attend even in the month of December. Intimation of which had been given by registered post as well by publication in the newspaper. Registered letters were received back undelivered. Charge-sheet was also got published in the Newspaper.

WW-1 stated that he joined the company on 16th April, 1968. There was union of workers named Bharat Carpet Karamchari Union. He was its President. At present he was General Secretary of the union. In September, 1978 the relation between the management and the workmen were not cordial due to reason of some demands by the union. He was suspended for the above reason on 29th August, 1978. His residential address was 13/3, Subhash Nagar Jhughi, Post Office Amar Nagar, Mathura Road, Faridabad. The management addressed letters to him at Gopi Colony, Old Faridabad. His address given on Ex. M-11 was correct. After his suspension he remained at his residential address. No Postman came to him to deliver any letter from the management. Shri Banwari Lal was General Secretary of the union in September, 1978. He did not know if there was any incident with Shri Banwari Lal on 19th September, 1978. He read Hindustan Times and Nav Bharat Times. He did not know if there was any paper "Shere Haryana". He did not receive any intimation to join enquiry. He had replied the charge-sheet. He did not receive any letter Ex. M-38. He received his suspension allowance. He received letter Ex. W-3 from the management and replied it —vide Ex. W-2. Ex. W-4 was photo copy of attendance card. Ex. W-5 was copy of payment of suspension allowance. Address given on Ex. M-1 was correct. He received Ex. M-4. Address on Ex. M-8 and M-9 was not his correct address. Letter Ex. M-11 was not offered to him, nor address on the same was his correct address. He did not receive any letter for enquiry, nor any letter or verbal information. He served demand notice Ex. M-6 as President of the union. There was no negotiations of settlement on the demand notice. He did not notice any incident on 19th September, 1978. There was criminal case pending in the criminal court against him before 19th September, 1978 which was still pending. In cross examination he stated that the union was a registered union. At the time of its registration Shri Banwari Lal was the General Secretary, Shri Hari Nath Shukla its Cashier. He denied the suggestion that he refused to receive letter Ex. M-11, M-24, M-3 M-38 and M-41. He also denied that he was informed by the management of the enquiry during the arbitration proceedings. He was informed by the Labour Inspector about his dismissal. He did not know if he had filled in employment form at the time of his entry into service. He did not know if there was a provision in the Standing Orders under which it was for the workmen to inform about the change of his address. He did not know the place of publication of Nav Bharat Times and Hindustan Times. He did not know if these are published from Faridabad. Criminal case against him was at the instance of the management. The management had made out cases regarding some alleged incident on 26th August, 1978. He did not receive any chargesheet from the management. He was involved in criminal case regarding incident of 19th September, 1978. His signature appear on Ex. M-8. WW-2 stated that he joined this concern on 21st August, 1972. He was suspended by the management. His address at the time of entry into service was Village Naya Gaon, District Mungar. He did not receive any letter from the management after 19th September, 1978, nor any letter from the Enquiry Officer was received by him. He had not seen any newspaper "Shere Haryana". Shri Lalit Joshi, Shri Lakh Ram and others attacked Shri Banwari Lal. There was arbitration proceedings regarding lock-out, suspension of workmen and bonus etc. He attended arbitration proceedings. The management did not inform him regarding any domestic enquiry. He did not receive any copy of enquiry proceedings from the management. He did not refuse any letter of the management. He seldom read any newspaper. The management did not like union. In cross examination he stated the name of the union was Bharat Carpet Karamchari Union affiliated to CITU. He did not know for what CITU stands. It was correct that he filled enrolment

form at the time of joining service. He had given Sarai Khawaja, Banarsi Colony, Post Office Amar Nagar as his address. The name of his father was Shri Channa Sanghai. There was some assault incident in the factory on 19th September, 1978. He was not involved in it, but it was correct that he was arrested. He was not present at the time of attack on Shri Banwari Lal. He knew about the involvement of Shri Lalit Joshi etc. because they were arrested. He had not read F.I.R. He learnt about his suspension when he came from Jail. He was arrested on 2nd October, 1978 and was released on 30th October, 1978. Arbitration proceedings started during the closure of the factory. Shri M. Kuttappan was the Arbitrator. The Postman did not offer him Ex.M-7, M-28, M-27 and M39, for delivery. He knew that Nav Bharat Times paper was published from Faridabad.

The representative for the management argued that there had been violence in the factory and the concerned workmen were suspended which matter was referred to the arbitration of Shri M. Kuttappan, I.A.S., the then Secretary to Government of Haryana, Labour and Employment Department who gave his arbitration award. Under issue No. 2 of which he held that the workers suspended under charges of violence beating or, disorderly behaviour and who were arrested or against whom warrants had been issued on criminal charges will remain suspended till the domestic enquiry was completed. He further argued that the chargesheeted workmen were informed of the charges on the address given by them in their enrolment forms. I find that letters were sent to them by registered A.D. post which were received back undelivered with the remark of the Postman as "refused" and this endorsement showing call by him on different dates to the addressee. The management placed on record original letters along with postal receipts on each file. To prove violence and disorderly behaviour, the management placed on record copy of FIR No. 22 dated 19th September, 1978 registered under sections 148, 149, 427, 506, 323, 345, 332, 356, 307 and 379 of IPC. The management published chargesheet and names of the concerned workmen in a local Hindi Newspaper "Shere Haryana" in its issue dated 16th October, 1978 calling upon the workmen to submit their explanation. No explanation was received, therefore, the management appointed Shri K.K. Karoli, Enquiry Officer. The intimation of enquiry was sent to the concerned workmen through registered A.D. covers and a notice was also published in the same newspaper in its issue dated 26th October, 1978. The workmen did not attend the enquiry proceedings. The Enquiry Officer did not proceed *ex-parte*. Another notice was published in the local newspaper in its issue dated 7th December, 1978. This time also the workmen did not attend the enquiry proceedings and the Enquiry Officer, proceeded *ex parte*. The enquiry was conducted on a number of dates and finally after its conclusion he submitted the enquiry report along with other papers to the management. The management after considering the same passed order of dismissal which were sent to the concerned workman by registered A.D. post but received back undelivered. The management got published dismissal orders in the Newspaper dated 1st May, 1979 in "Shere Haryana". He also argued that the management in their written statement filed before the Arbitrator has referred in para 32, 36 about the domestic enquiry and publication of notices in "Shere Haryana".

The representative for the workmen argued that the workmen were not informed of the charges and the enquiry by the management. As regards the Newspaper he stated that it was not a daily paper and its circulation was not proved by the management. He further argued that the management cooked in false criminal cases against the workmen. He cited AIR 1968 Bombay 358 in which it is held as under :—

"Summons by registered post returned "refused" *ex parte* decree-statement on oath by defendant that Summons was not tendered—Failure to summon postman—Sufficient ground for setting aside decree".

Although presumption of correctness is attached to a report made by a public servant in the discharge of his official duties, however, the management went further in publishing the chargesheet and notice of enquiry in a newspaper. In support of it the representative for the management argued that the action of the workmen in not joining domestic enquiry was deliberate. Letters were sent to them on their given addresses. So much so

notices were published in the Local newspaper a number of times. I also find a notice published from J.M.A. Industries Limited, Faridabad, about starting of disciplinary proceedings against some of their workmen in the issue number 36 of "Shere Haryana". There are many advertisements also in the newspaper which shows that the paper has patterns and must have circulation. In 1961 IFLR(S.C.) page 183 it is held "Where chargesheets sent to workmen returned unserved, the proper course for the company is to publish notices in some newspapers in the regional language, in the absence of a provision in the Standing Orders for their display in the notice-board, of the company. When that course is not adopted it must be held that the workman had no notice of the charges against them and the date by which they had to submit their explanation and the date of enquiry".

I have gone through the enquiry files and find postal receipts, underlivered registered letters, issues of newspaper and enquiry proceedings. The enquiry was held on a number of dates as given above. This process continued over a period of more than three months. I find that the management and the Enquiry Officer have done their best to inform the workmen of the charges and the date of enquiry but the workmen did not participate. In such circumstances no course was left except to proceed *ex-parte*, therefore, I do not find any ground to vitiate the enquiry. This issue is decided in favour of the management.

Issue No. 6.—MW—1 stated that the Enquiry Officer submitted his finding separately with regard to each concerned workman holding them guilty of the charges. The management examined the finding of the Enquiry Officer and concurred with it the past record of these workmen were also not good. Therefore, the management dismissed the workman. Dismissal orders were sent by registered A.D. post at the local and permanent address of the workmen. Dismissal orders were also published in the newspaper.

The parties advanced arguments on the punishment issue that in case the enquiry was held to be proper what was the justified quantum of punishment. I have gone through the chargesheet and statement of witnesses recorded during the enquiry as well enquiry report which is based on evidence. It is interesting to point out that arbitration award published in *Haryana Government Gazetted Extraordinary*, dated 27th February, 1979, speaks at length the happenings in the factory during that period. I re-produce para 1 of the finding of the arbitrator as follows:

"Lockout though justified for few weeks, it would have been possible to re-open the factory when things cooled down. When the workers approached the SDM, he contacted the management and they wanted an assurance from the workers that they would maintain peace and give normal production. Nearly half of the workers of the factory gave this assurance to the management. The S.D.M. also assured the management that he would provide necessary protection to life and property of the mill. Perhaps the fear of the management could not have been removed by the assurances. Due to such violence the management closed the factory. Since the workers have not worked during this period, they are not entitled for wages for the lockout periods. Had there been normalcy in the factory, the workers would have worked and earned their wages. They had to undergo sufferings. To mitigate the financial strains, the workers should receive advance wages of 1½ months which would be adjusted against the production they will give. The workers should make up the loss of production and earn wages as awarded under issue No. 1.

This all leads me to infer that the workmen were involved in cases of misconduct for which punishment prescribed under the Standing Orders was dismissal. I do not find any ground to interfere under section 11-A of the I.D. Act in the award of punishment by the management on established misconduct alleged against the workmen. This issue is also decided in favour of the management.

Issue No. 7.—The workmen are not entitled to any relief.

While answering the reference, I give my award that the termination of services of the workmen concerned was justified and in order. The workmen are not entitled to any relief.

Dated 23rd April, 1981

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 377, dated 23rd April, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 9(1)81-8 Lab/4982.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Escorts Ltd., Plant II, Mathura Road, Faridabad:—

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD

Reference No. 35 of 1977

between

SHRI KEDAR NATH GAMBHIR, WORKMAN AND THE MANAGEMENT
OF M/s ESCORTS LTD., PLANT II, MATHURA ROAD, FARIDABAD.

Present:—

Shri S.R. Gupta, for the workman.

Shri S.S. Sethi, for the management.

AWARD

By order No. ID/FD/Q-17-76/13646, dated 8th April, 1977, the Governor of Haryana referred the following dispute between the management of M/s Escorts Ltd., Plant-II, Mathura Road, Faridabad, and its workman Shri Kedar Nath Gambhir, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Kedar Nath Gambhir was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 26th July, 1977:—

- (1) Whether the workman concerned was a probationer and his probation period ended on 30th September, 1976 ?
- (2) Whether the termination of service of the workman concerned just on the expiry of the probation period was justified and in order ? If not, to what relief ?

And the case was fixed for the evidence of the management, who examined Shri P.C. Aggarwal, their Deputy Manager, Personnel, as MW-1, Shri Alok Mitra as MW-2 and Shri Balwant Singh as MW-3 and closed their case. The workman examined himself as WW-1 and closed his case. Arguments were heard. Now I give my finding issueswise.—

Issue No. 1—M.W. 1 stated that the concerned workman was initially taken as an apprentice,—*vide* Exhibit M-1. Exhibit M-2 was copy of joining report. His apprenticeship was extended,—*vide* letter Exhibit M-3. Exhibit M-4 was the copy of contract under the Apprentices Act, 1961. Exhibit M-6 was copy of application of the workman concerned and Exhibit M-7 was copy of certificate. The workman was taken on probation on 1st April, 1976,—*vide* appointment letter copy Exhibit M-8 and Exhibit M-9 was copy of joining report of the workman. He applied for issue of certificate,—*vide* Exhibit M-10 and certificate copy Exhibit M-11 was issued. Exhibit M-12 was copy of certificate. The workman was warned,—*vide* Exhibit M-14. His appraisal report was Exhibit M-15. Services of the workman were terminated,—*vide* Exhibit M-16 and Exhibit M-17 was the copy of Certified Standing Orders. He further stated that the workman was paid stipend within the period of apprenticeship. In cross-examination he denied the suggestion that the workman started to work as a probationer with effect from 4th June, 1976. He was actually made probationer on 1st April, 1976. He was never offered opportunity for his explanation. MW-2 stated that the workman was given regular appointment on 1st April, 1976, as a probationer for six months,—*vide* Exhibit M-8. His work was not found up to the mark, therefore, he was not recommended for confirmation. MW-3 corroborated the statement of other MWs.

WW-1 stated that he joined the management in May, 1974, as an apprentice. He had passed ITI. He was apprentice for two years under the Apprentices Act. He was taken in their employment since 1st April, 1976. His work was good, therefore, he was regular in the employment before two years of apprenticeship. At that time he was not told that if he was a probationer or temporary hand. He performed his duty upto 30th September, 1976. He made an application for leave for one day, when he returned after availing two days holidays falling after the leave day he as not given duty.

According to appointment letter Exhibit M-8 the date of appointment of the workman is shown as 1st April, 1976 and his period of probation six months. Exhibit M-9 was joining report with effect from 1st April, 1976. Thus in the statements of MW-1 and WW-1, supported by Exhibit M-8 appointment letter and Exhibit M-9 joining report of the workman, probation period of six months was to expire on 30th September, 1976. I, therefore, hold that the workman concerned was probationer and his probation period ended on 30th September, 1976. This issue is decided in favour of the management.

Issue No. 2.—The representative for the management argued that the services of a probationer could be terminated on the expiry of the period of probation without holding any enquiry. He cited 1970 I LLJ page 450 in which it is held that the services of a probationer could be terminated after the period of probation. In 1971 I LLJ S.C. page 533 para 7 it is held that it was well settled that a probationer or temporary servant could be discharged if he is found not suitable for the post which he was holding. On the other hand the

representative for the workman drew my attention towards definition of a workman as given in section 2(S) of the I.D. Act in which an apprentice was also a workman and he also contended that after taking into account period of apprenticeship he had put in more than two years service and on the ratio of Santosh Gupta *versus* State Bank of Patiala simplicitor discharge from services without conforming to the provision of section 25(F) was fatal.

The representative for the management contended that the workman as an apprentice was not that apprentice which was meant by section 2(S). He was not taken as an ordinary apprentice which was meant by the Act. He was taken as an obligation placed on the management by the Apprentices Act, 1961. Exhibit M-1 to M-3, M-6 to M-7 all speak of the apprenticeship of the workman. Exhibit M-4 was a contract between the parties and Exhibit M-5 certificate under the Apprentices Act by Apprenticeship Advisor in the State of Haryana. This position is admitted by the parties that he first joined as such in the company. The representative drew my attention towards section 18 of the Apprentices Act, 1961 which runs thus :—

Apprentices are trainees and not workers. Save as otherwise provided in this Act,—

- (a) every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker ; and
- (b) the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.

He further referred 1976 (32) FLR page 210 and 1954 ILLJ page 44 in which it is held that an employee works in the Mills and receives wages whereas an apprentice works for learning and gets only stipend. In 1975 (31) FLR page 387 in which it is held as under :

In the instant case from the terms of the agreement it is clear that apprentices are mere trainees for a particular period for a distinct purpose and the employer is not bound to employ them in their works after the period of training is over. During the apprenticeship then cannot be said to be employed in the work of the company or in connection with the work of the company. That would have been so if they were employed in a regular way by the company. On the other hand the purpose of the engagement under the particular scheme is only to offer training under certain terms and conditions. Besides, the apprentices are not given wages within the meaning of that term under the Act. If they were regular employees under the Act, they would have been entitled to additional remuneration such as daily allowance and other allowances which are available to the regular employees.

I, therefore, conclude to hold that the period of work of the workman before his joining as a probationer as an apprentice under the Apprenticeship Act and not an apprentice as defined under section 2(F) of the Industrial Disputes Act. He was not entitled to the benefits allowed by their Lordships of the Supreme Court in the case of Santosh Gupta *versus* State Bank of Patiala. I decide this issue in favour of the management.

While answering the reference, I give my award that the termination of services of the workman concerned was justified and in order. The workman is not entitled to any relief.

Dated the 30th March, 1981.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 364, dated 23rd April, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.